

# **SENATE, No. 175**

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## **STATE OF NEW JERSEY**

### **215th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris and Somerset)**

**Co-Sponsored by:**

**Senators Connors, Oroho, O'Toole, Pennacchio, Beck, Kyrillos, Doherty,  
T.Kean and Addiego**

**SYNOPSIS**

Restores the death penalty for certain murders.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1    **AN ACT** restoring the death penalty for certain murders, amending  
2       and supplementing various parts of the statutory law.

3

4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7       1. N.J.S.2B:23-10 is amended to read as follows:

8       2B:23-10. Examination of jurors. a. In the discretion of the  
9 court, parties to any trial may question any person summoned as a  
10 juror after the name is drawn and before the swearing, and without  
11 the interposition of any challenge, to determine whether or not to  
12 interpose a peremptory challenge or a challenge for cause. Such  
13 examination shall be permitted in order to disclose whether or not  
14 the juror is qualified, impartial and without interest in the result of  
15 the action. The questioning shall be conducted in open court under  
16 the trial judge's supervision.

17       b. (Deleted by amendment, P.L.2007, c.204).

18       c. The examination of jurors shall be under oath only in cases in  
19 which a death penalty may be imposed.  
20 (cf: P.L.2007, c.204, s.4)

21

22       2. N.J.S.2B:23-13 is amended to read as follows:

23       2B:23-13. Peremptory challenges.

24       Upon the trial of any action in any court of this State, the parties  
25 shall be entitled to peremptory challenges as follows:

26       a. In any civil action, each party, 6.

27       b. Upon an indictment for kidnapping, murder, aggravated  
28 manslaughter, manslaughter, aggravated assault, aggravated sexual  
29 assault, sexual assault, aggravated criminal sexual contact,  
30 aggravated arson, arson, burglary, robbery, forgery if it constitutes a  
31 crime of the third degree as defined by subsection b. of  
32 N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory challenges  
33 if tried alone and 10 challenges if tried jointly and the State, 12  
34 peremptory challenges if the defendant is tried alone and 6  
35 peremptory challenges for each 10 afforded the defendants if tried  
36 jointly. The trial court, in its discretion, may, however, increase  
37 proportionally the number of peremptory challenges available to the  
38 defendant and the State in any case in which the sentencing  
39 procedure set forth in subsection k. of N.J.S.2C:11-3 might be  
40 utilized.

41       c. Upon any other indictment, defendants, 10 each; the State,  
42 10 peremptory challenges for each 10 challenges allowed to the  
43 defendants. When the case is to be tried by a jury from another  
44 county, each defendant, 5 peremptory challenges, and the State, 5

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 peremptory challenges for each 5 peremptory challenges afforded  
2 the defendants.  
3 (cf: P.L.2007, c.204, s.5)  
4  
5 3. N.J.S.2C:11-3 is amended to read as follows:  
6 2C:11-3. Murder.  
7 a. Except as provided in N.J.S.2C:11-4, criminal homicide  
8 constitutes murder when:  
9 (1) The actor purposely causes death or serious bodily injury  
10 resulting in death; or  
11 (2) The actor knowingly causes death or serious bodily injury  
12 resulting in death; or  
13 (3) It is committed when the actor, acting either alone or with  
14 one or more other persons, is engaged in the commission of, or an  
15 attempt to commit, or flight after committing or attempting to  
16 commit robbery, sexual assault, arson, burglary, kidnapping,  
17 carjacking, criminal escape or terrorism pursuant to section 2 of  
18 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of  
19 immediate flight therefrom, any person causes the death of a person  
20 other than one of the participants; except that in any prosecution  
21 under this subsection, in which the defendant was not the only  
22 participant in the underlying crime, it is an affirmative defense that  
23 the defendant:  
24 (a) Did not commit the homicidal act or in any way solicit,  
25 request, command, importune, cause or aid the commission thereof;  
26 and  
27 (b) Was not armed with a deadly weapon, or any instrument,  
28 article or substance readily capable of causing death or serious  
29 physical injury and of a sort not ordinarily carried in public places  
30 by law-abiding persons; and  
31 (c) Had no reasonable ground to believe that any other  
32 participant was armed with such a weapon, instrument, article or  
33 substance; and  
34 (d) Had no reasonable ground to believe that any other  
35 participant intended to engage in conduct likely to result in death or  
36 serious physical injury.  
37 b. (1) Murder is a crime of the first degree but a person  
38 convicted of murder shall be sentenced, except as provided in  
39 paragraphs (2), (3) and (4) of this subsection or subsection k. of this  
40 section, by the court to a term of 30 years, during which the person  
41 shall not be eligible for parole, or be sentenced to a specific term of  
42 years which shall be between 30 years and life imprisonment of  
43 which the person shall serve 30 years before being eligible for  
44 parole.  
45 (2) If the victim was a law enforcement officer and was  
46 murdered while performing his official duties or was murdered  
47 because of his status as a law enforcement officer, the person

1 convicted of that murder shall be sentenced, except as otherwise  
2 provided in subsection k. of this section, by the court to a term of  
3 life imprisonment, during which the person shall not be eligible for  
4 parole.

5 (3) A person convicted of murder and who is not sentenced to  
6 death under this section shall be sentenced to a term of life  
7 imprisonment without eligibility for parole if the murder was  
8 committed under all of the following circumstances:

9 (a) The victim is less than 14 years old; and

10 (b) The act is committed in the course of the commission,  
11 whether alone or with one or more persons, of a violation of  
12 N.J.S.2C:14-2 or N.J.S.2C:14-3.

13 (4) If the defendant was subject to sentencing pursuant to  
14 subsection k. of this section and the jury or court found the  
15 existence of one or more aggravating factors, but that such factors  
16 did not outweigh the mitigating factors found to exist by the jury or  
17 court or the jury was unable to reach a unanimous verdict as to the  
18 weight of the factors, the defendant shall be sentenced by the court  
19 to a term of life imprisonment during which the defendant shall not  
20 be eligible for parole.

21 With respect to a sentence imposed pursuant to this subsection,  
22 the defendant shall not be entitled to a deduction of commutation  
23 and work credits from that sentence.

24 **【**Any person convicted under subsection a.(1) or (2) who  
25 committed the homicidal act by his own conduct; or who as an  
26 accomplice procured the commission of the offense by payment or  
27 promise of payment of anything of pecuniary value; or who, as a  
28 leader of a narcotics trafficking network as defined in N.J.S.2C:35-  
29 3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,  
30 commanded or by threat or promise solicited the commission of the  
31 offense, or, if the murder occurred during the commission of the  
32 crime of terrorism, any person who committed the crime of  
33 terrorism, shall be sentenced by the court to life imprisonment  
34 without eligibility for parole, which sentence shall be served in a  
35 maximum security prison, if a jury finds beyond a reasonable doubt  
36 that any of the following aggravating factors exist:

37 (a) The defendant has been convicted, at any time, of another  
38 murder. For purposes of this section, a conviction shall be deemed  
39 final when sentence is imposed and may be used as an aggravating  
40 factor regardless of whether it is on appeal;

41 (b) In the commission of the murder, the defendant purposely or  
42 knowingly created a grave risk of death to another person in  
43 addition to the victim;

44 (c) The murder was outrageously or wantonly vile, horrible or  
45 inhuman in that it involved torture, depravity of mind, or an  
46 aggravated assault to the victim;

- 1 (d) The defendant committed the murder as consideration for the  
2 receipt, or in expectation of the receipt of anything of pecuniary  
3 value;
- 4 (e) The defendant procured the commission of the murder by  
5 payment or promise of payment of anything of pecuniary value;
- 6 (f) The murder was committed for the purpose of escaping  
7 detection, apprehension, trial, punishment or confinement for  
8 another offense committed by the defendant or another;
- 9 (g) The murder was committed while the defendant was engaged  
10 in the commission of, or an attempt to commit, or flight after  
11 committing or attempting to commit murder, robbery, sexual  
12 assault, arson, burglary, kidnapping, carjacking or the crime of  
13 contempt in violation of subsection b. of N.J.S.2C:29-9;
- 14 (h) The defendant murdered a public servant, as defined in  
15 N.J.S.2C:27-1, while the victim was engaged in the performance of  
16 his official duties, or because of the victim's status as a public  
17 servant;
- 18 (i) The defendant: (i) as a leader of a narcotics trafficking  
19 network as defined in N.J.S.2C:35-3 and in furtherance of a  
20 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded  
21 or by threat or promise solicited the commission of the murder or  
22 (ii) committed the murder at the direction of a leader of a narcotics  
23 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a  
24 conspiracy enumerated in N.J.S.2C:35-3;
- 25 (j) The homicidal act that the defendant committed or procured  
26 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
- 27 (k) The victim was less than 14 years old; or
- 28 (l) The murder was committed during the commission of, or an  
29 attempt to commit, or flight after committing or attempting to  
30 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-  
31 2).
- 32 (5) A juvenile who has been tried as an adult and convicted of  
33 murder shall be sentenced pursuant to paragraph (1), (2) or (3) of  
34 this subsection.】
- 35 c. (Deleted by amendment, P.L.2007, c.204).
- 36 d. (Deleted by amendment, P.L.2007, c.204).
- 37 e. (Deleted by amendment, P.L.2007, c.204).
- 38 f. (Deleted by amendment, P.L.2007, c.204).
- 39 g. (Deleted by amendment, P.L.2007, c.204).
- 40 h. (Deleted by amendment, P.L.2007, c.204).
- 41 i. For purposes of this section the term “homicidal act” shall  
42 mean conduct that causes death or serious bodily injury resulting in  
43 death.
- 44 j. In a sentencing proceeding conducted pursuant to this  
45 section, the display of a photograph of the victim taken before the  
46 homicide shall be permitted.

1     k. Any person convicted under subsection a.(1) or (2) who  
2     committed the homicidal act by his own conduct; or who as an  
3     accomplice procured the commission of the offense by payment or  
4     promise of payment of anything of pecuniary value if: (1) the victim  
5     was a law enforcement officer or correction officer and was  
6     murdered while performing his official duties or was murdered  
7     because of his status as a law enforcement officer or correction  
8     officer; (2) the victim was less than 18 years old; or (3) the murder  
9     occurred during the commission of the crime of terrorism pursuant  
10    to section 2 of P.L.2002, c.26 (C.2C:38-2), shall be sentenced as  
11    provided hereinafter:

12       (1) The court shall conduct a separate sentencing proceeding to  
13       determine whether the defendant should be sentenced to death or  
14       pursuant to the provisions of subsection b. of this section.

15       Where the defendant has been tried by a jury, the proceeding  
16       shall be conducted by the judge who presided at the trial and before  
17       the jury which determined the defendant's guilt, except that, for  
18       good cause, the court may discharge that jury and conduct the  
19       proceeding before a jury empaneled for the purpose of the  
20       proceeding. Where the defendant has entered a plea of guilty or has  
21       been tried without a jury, the proceeding shall be conducted by the  
22       judge who accepted the defendant's plea or who determined the  
23       defendant's guilt and before a jury empaneled for the purpose of the  
24       proceeding. On motion of the defendant and with consent of the  
25       prosecuting attorney the court may conduct a proceeding without a  
26       jury. Nothing in this subsection shall be construed to prevent the  
27       participation of an alternate juror in the sentencing proceeding if  
28       one of the jurors who rendered the guilty verdict becomes ill or is  
29       otherwise unable to proceed before or during the sentencing  
30       proceeding.

31       (2) (a) At the proceeding, the State shall have the burden of  
32       establishing beyond a reasonable doubt the existence of any  
33       aggravating factors set forth in paragraph (4) of this subsection. The  
34       defendant shall have the burden of producing evidence of the  
35       existence of any mitigating factors set forth in paragraph (5) of this  
36       subsection but shall not have a burden with regard to the  
37       establishment of a mitigating factor.

38       (b) The admissibility of evidence offered by the State to  
39       establish any of the aggravating factors shall be governed by the  
40       rules governing the admission of evidence at criminal trials. The  
41       defendant may offer, without regard to the rules governing the  
42       admission of evidence at criminal trials, reliable evidence relevant  
43       to any of the mitigating factors. If the defendant produces evidence  
44       in mitigation which would not be admissible under the rules  
45       governing the admission of evidence at criminal trials, the State  
46       may rebut that evidence without regard to the rules governing the  
47       admission of evidence at criminal trials.

1     (c) Evidence admitted at the trial, which is relevant to the  
2     aggravating and mitigating factors set forth in paragraphs (4) and  
3     (5) of this subsection, shall be considered without the necessity of  
4     reintroducing that evidence at the sentencing proceeding; provided  
5     that the fact finder at the sentencing proceeding was present as  
6     either the fact finder or the judge at the trial.

7     (d) The State and the defendant shall be permitted to rebut any  
8     evidence presented by the other party at the sentencing proceeding  
9     and to present argument as to the adequacy of the evidence to  
10    establish the existence of any aggravating or mitigating factor.

11    (e) Prior to the commencement of the sentencing proceeding, or  
12    at such time as he has knowledge of the existence of an aggravating  
13    factor, the prosecuting attorney shall give notice to the defendant of  
14    the aggravating factors which he intends to prove in the proceeding.

15    (f) Evidence offered by the State with regard to the  
16    establishment of a prior homicide conviction pursuant to paragraph  
17    (4)(a) of this subsection may include the identity and age of the  
18    victim, the manner of death and the relationship, if any, of the  
19    victim to the defendant.

20    (3) The jury or, if there is no jury, the court shall return a  
21    special verdict setting forth in writing the existence or nonexistence  
22    of each of the aggravating and mitigating factors set forth in  
23    paragraphs (4) and (5) of this subsection. If any aggravating factor  
24    is found to exist, the verdict shall also state whether it outweighs  
25    beyond a reasonable doubt any one or more mitigating factors.

26    (a) If the jury or the court finds that any aggravating factors  
27    exist and that all of the aggravating factors outweigh beyond a  
28    reasonable doubt all of the mitigating factors, the court shall  
29    sentence the defendant to death.

30    (b) If the jury or the court finds that no aggravating factors  
31    exist, or that all of the aggravating factors which exist do not  
32    outweigh all of the mitigating factors, the court shall sentence the  
33    defendant pursuant to subsection b.

34    (c) If the jury is unable to reach a unanimous verdict, the court  
35    shall sentence the defendant pursuant to subsection b.

36    (4) The aggravating factors which may be found by the jury or  
37    the court are:

38    (a) The defendant has been convicted, at any time, of another  
39    murder. For purposes of this section, a conviction shall be deemed  
40    final when sentence is imposed and may be used as an aggravating  
41    factor regardless of whether it is on appeal;

42    (b) In the commission of the murder, the defendant purposely or  
43    knowingly created a grave risk of death to another person in  
44    addition to the victim;

45    (c) The murder was outrageously or wantonly vile, horrible or  
46    inhuman in that it involved torture, depravity of mind, or an  
47    aggravated assault to the victim;

1     (d) The defendant committed the murder as consideration for the  
2     receipt, or in expectation of the receipt of anything of pecuniary  
3     value;

4     (e) The defendant procured the commission of the murder by  
5     payment or promise of payment of anything of pecuniary value;

6     (f) The murder was committed for the purpose of escaping  
7     detection, apprehension, trial, punishment or confinement for  
8     another offense committed by the defendant or another;

9     (g) The murder was committed while the defendant was engaged  
10    in the commission of, or an attempt to commit, or flight after  
11    committing or attempting to commit murder, robbery, sexual  
12    assault, arson, burglary, kidnapping, carjacking or the crime of  
13    contempt in violation of N.J.S.2C:29-9b.;

14    (h) The defendant murdered a public servant, as defined in  
15    N.J.S.2C:27-1, while the victim was engaged in the performance of  
16    his official duties, or because of the victim's status as a public  
17    servant;

18    (i) The defendant: (i) as a leader of a narcotics trafficking  
19    network as defined in N.J.S.2C:35-3 and in furtherance of a  
20    conspiracy enumerated in N.J.S.2C:35-3, committed, commanded  
21    or by threat or promise solicited the commission of the murder or  
22    (ii) committed the murder at the direction of a leader of a narcotics  
23    trafficking network as defined in N.J.S.2C:35-3 in furtherance of a  
24    conspiracy enumerated in N.J.S.2C:35-3;

25    (j) The homicidal act that the defendant committed or procured  
26    was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;

27    (k) The victim was less than 14 years old; or

28    (l) The murder was committed during the commission of, or an  
29    attempt to commit, or flight after committing or attempting to  
30    commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-  
31    2).

32    (5) The mitigating factors which may be found by the jury or the  
33    court are:

34    (a) The defendant was under the influence of extreme mental or  
35    emotional disturbance insufficient to constitute a defense to  
36    prosecution;

37    (b) The victim solicited, participated in or consented to the  
38    conduct which resulted in his death;

39    (c) The age of the defendant at the time of the murder;

40    (d) The defendant's capacity to appreciate the wrongfulness of  
41    his conduct or to conform his conduct to the requirements of the  
42    law was significantly impaired as the result of mental disease or  
43    defect or intoxication, but not to a degree sufficient to constitute a  
44    defense to prosecution;

45    (e) The defendant was under unusual and substantial duress  
46    insufficient to constitute a defense to prosecution;



1     (f) The defendant has no significant history of prior criminal  
2     activity;

3     (g) The defendant rendered substantial assistance to the State in  
4     the prosecution of another person for the crime of murder; or

5     (h) Any other factor which is relevant to the defendant's  
6     character or record or to the circumstances of the offense.

7     (6) When a defendant at a sentencing proceeding presents  
8     evidence of the defendant's character or record pursuant to  
9     subparagraph (h) of paragraph (5) of this subsection, the State may  
10    present evidence of the murder victim's character and background  
11    and of the impact of the murder on the victim's survivors. If the  
12    jury finds that the State has proven at least one aggravating factor  
13    beyond a reasonable doubt and the jury finds the existence of a  
14    mitigating factor pursuant to subparagraph (h) of paragraph (5) of  
15    this subsection, the jury may consider the victim and survivor  
16    evidence presented by the State pursuant to this paragraph in  
17    determining the appropriate weight to give mitigating evidence  
18    presented pursuant to subparagraph (h) of paragraph (5) of this  
19    subsection. As used in this paragraph "victim and survivor  
20    evidence" may include the display of a photograph of the victim  
21    taken before the homicide.

22    l. The sentencing proceeding set forth in subsection k. of this  
23    section shall not be waived by the prosecuting attorney.

24    m. Every judgment of conviction which results in a sentence of  
25    death under this section shall be appealed, pursuant to the Rules of  
26    Court, to the Supreme Court. Upon the request of the defendant,  
27    the Supreme Court shall also determine whether the sentence is  
28    disproportionate to the penalty imposed in similar cases,  
29    considering both the crime and the defendant. Proportionality  
30    review under this section shall be limited to a comparison of similar  
31    cases in which a sentence of death has been imposed under  
32    subsection k. of this section. In any instance in which the defendant  
33    fails, or refuses to appeal, the appeal shall be taken by the Office of  
34    the Public Defender or other counsel appointed by the Supreme  
35    Court for that purpose.

36    n. Prior to the jury's sentencing deliberations, the trial court  
37    shall inform the jury of the sentences which may be imposed  
38    pursuant to subsection b. of this section on the defendant if the  
39    defendant is not sentenced to death. The jury shall also be informed  
40    that a failure to reach a unanimous verdict shall result in sentencing  
41    by the court pursuant to subsection b.

42    o. A juvenile who has been tried as an adult and convicted of  
43    murder shall not be sentenced pursuant to the provisions of  
44    subsection k. but shall be sentenced pursuant to the provisions of  
45    subsection b. of this section.

46    p. In a sentencing proceeding conducted pursuant to this  
47    section, no evidence shall be admissible concerning the method or

1 manner of execution which would be imposed on a defendant  
2 sentenced to death.

3 (cf: P.L.2007, c.204, s.1)

4  
5 4. Section 2 of P.L.2007, c.204 (C.2C:11-3b) is amended to read  
6 as follows:

7 2. An inmate sentenced to death prior to the date of the  
8 enactment of **[this act]** P.L.2007, c.204, upon motion to the  
9 sentencing court and waiver of any further appeals related to  
10 sentencing, shall be resentenced to a term of life imprisonment  
11 during which the defendant shall not be eligible for parole. Such  
12 sentence shall be served in a maximum security prison.

13 Any such motion to the sentencing court shall be made within 60  
14 days of the enactment of this act. If the motion is not made within  
15 60 days the inmate shall remain under the sentence of death  
16 previously imposed by the sentencing court.

17 (cf: P.L.2007, c.204, s.2)

18  
19 5. (New section) Definitions.

20 As used in this act:

21 a. "Commissioner" means the Commissioner of the Department  
22 of Corrections.

23 b. "Department" means the Department of Corrections.

24 c. "Inmate" means a person who is incarcerated in the  
25 department who is sentenced to death pursuant to the provisions of  
26 N.J.S.2C:11-3.

27  
28 6. (New section) When a person is sentenced to death pursuant to  
29 the provisions of N.J.S.2C:11-3, that punishment shall be imposed  
30 by continuous, intravenous, administration until the person is dead  
31 of a lethal quantity of an ultrashort-acting barbiturate in  
32 combination with a chemical paralytic agent in a quantity sufficient  
33 to cause death. Prior to the injection of the lethal substance, the  
34 person shall be sedated by a licensed physician, registered nurse, or  
35 other qualified personnel, by either an oral tablet or capsule or an  
36 intramuscular injection of a narcotic or barbiturate such as  
37 morphine, cocaine or demerol.

38  
39 7. (New section) a. The commissioner shall determine the  
40 substances and procedure to be used in an execution. Any  
41 imposition of the punishment of death by administration of the  
42 required lethal substances in the manner required by section 6 of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill)  
44 shall not be construed to be the practice of medicine and any  
45 pharmacist or pharmaceutical supplier is authorized to dispense  
46 drugs to the commissioner or his designee, without prescription, for  
47 carrying out the provisions of section 6 of P.L. , c. (C. )

1 (pending before the Legislature as this bill), notwithstanding any  
2 other provision of law to the contrary.

3 b. The commissioner shall designate persons who are qualified to  
4 administer injections and who are familiar with medical procedures,  
5 other than licensed physicians, as execution technicians to assist in  
6 the carrying out of executions, but the procedures and equipment  
7 utilized in imposing the lethal substances shall be designed to insure  
8 that the identity of the person actually inflicting the lethal substance  
9 is unknown even to the person himself.

10

11 8. (New section) The department shall provide and maintain a  
12 suitable and efficient facility enclosed from public view, within the  
13 confines of a designated State prison for the imposition of the  
14 punishment of death. That facility shall contain the apparatus and  
15 equipment necessary for the carrying out of executions in  
16 accordance with the provisions of this act.

17

18 9. (New section) a. When a person is sentenced to the  
19 punishment of death, the judge who presided at the sentencing  
20 proceeding or if that judge is unavailable for any reason, then the  
21 assignment judge of the vicinage and, if not available, then any  
22 Superior Court judge of the vicinage, shall make out, sign and  
23 deliver to the sheriff of the county, a warrant directed to the  
24 commissioner, stating the conviction and sentence, appointing a  
25 date on which the sentence shall be executed, and commanding the  
26 commissioner to execute the sentence on that date.

27 b. If the execution of the sentence on the date appointed shall be  
28 delayed while the conviction or sentence is being appealed, the  
29 judge authorized to act pursuant to subsection a. of this section, at  
30 the conclusion of the appellate process, if the conviction or sentence  
31 is not set aside, shall make out, sign and deliver another warrant as  
32 provided in subsection a. of this section. If the execution of the  
33 sentence on the date appointed is delayed by any other cause, the  
34 judge shall, as soon as such cause ceases to exist, make out, sign  
35 and deliver another warrant as provided in subsection a. of this  
36 section.

37 c. The date appointed in the warrant shall be not less than 30  
38 days and not more than 60 days after the issuance of the warrant.  
39 The commissioner may fix the time of execution on that date.

40

41 10. (New section) a. Within 10 days after issuance of a warrant  
42 as provided in section 9 of P.L. , c. (C. ) (pending before  
43 the Legislature as this bill), the sheriff shall deliver the warrant, and  
44 also the person sentenced, if he is not already in the custody of the  
45 department, to the department. From the time of the delivery of the  
46 warrant and until the imposition of the punishment of death upon  
47 him, unless discharged from the sentence, the person shall be kept

1 isolated from the general prison population in a designated State  
2 prison.

3 b. During the confinement and isolation no person shall be  
4 allowed physical access to him without a court order which shall  
5 not be unreasonably withheld, except corrections officers and  
6 officials, his counsel, and the members of his immediate family, and  
7 then only in accordance with the department's rules for security.  
8 Upon the request of the inmate, a clergyman or a member of the  
9 press shall be allowed access to the inmate without a court order but  
10 only in accordance with the department's rules for security.

11

12 11. (New section) a. The commissioner, the persons designated  
13 by the commissioner to act as execution technicians, and one  
14 licensed physician shall be present at the execution. The  
15 commissioner shall also select and invite the presence of, by at least  
16 three days' prior notice, six adult citizens. The names of the  
17 execution technicians shall not be disclosed, and the names of the  
18 six adult citizens who witnessed the execution shall not be disclosed  
19 until after the execution.

20 b. The commissioner shall, at the request of the person sentenced  
21 to death, authorize and permit no more than two clergymen, who  
22 are not related to the inmate, to be present at the execution. The  
23 commissioner may, at the request of the person sentenced to death,  
24 authorize and permit no more than two adult members of the  
25 person's immediate family to be present at the execution.

26 c. The commissioner shall permit four representatives of the  
27 news media to be present at the execution, for the purpose of giving  
28 their respective newspapers and associations accounts of the  
29 execution. The four representatives shall be composed of one  
30 representative of the major wire services, one representative of  
31 television news services, one representative of newspapers, and one  
32 representative of radio news services. Immediately following the  
33 execution, the four representatives of the news media may hold a  
34 press conference for the purpose of giving other news  
35 representatives an account of the execution.

36 d. The commissioner shall not authorize or permit any person to  
37 be present, except those authorized by this section.

38 e. The commissioner shall authorize and permit no more than  
39 four adult members of the victim's immediate family to be present  
40 at the execution. The names of the members of the victim's  
41 immediate family who witnessed the execution shall not be  
42 disclosed.

43 f. For purposes of this section, "immediate family" means a  
44 spouse, parent, stepparent, legal guardian, grandparent, child, or  
45 sibling.

46 g. Nothing in this section shall be construed to give a right to any  
47 person to delay or prevent the execution of a sentence of death on

1 the date appointed in the warrant pursuant to section 9 of P.L. ,  
2 c. (C. ) (pending before the Legislature as this bill).

3  
4 12. (New section) a. Immediately after the execution an  
5 examination of the body of the inmate shall be made by the licensed  
6 physicians present at the execution, and their report in writing  
7 stating the nature of the examination and occurrence of death, so  
8 made by them, shall be annexed to the certificate hereinafter  
9 mentioned and filed therewith.

10 b. The commissioner shall prepare and sign a certificate setting  
11 forth the time and place of the execution and stating that the  
12 execution was conducted in conformity to the sentence of the court  
13 and the provisions of this act. He shall cause the certificate to be  
14 filed, within 10 days after the execution, with the Superior Court in  
15 the county in which the person executed was convicted.

16 c. The commissioner may appoint a deputy within the  
17 department to execute the warrant of execution and to perform all  
18 the other duties imposed upon the commissioner by this act.

19  
20 13. (New section) a. Prior to the execution, the inmate shall be  
21 given the opportunity to decide in writing to whom his body shall  
22 be delivered after the execution. The commissioner or his deputy  
23 designated pursuant to subsection c. of section 12 of P.L. ,  
24 c. (C. ) (pending before the Legislature as this bill) shall  
25 sign and authorize the inmate's request if the request is not contrary  
26 to public policy or law. If the inmate does not indicate to whom his  
27 body shall be delivered or if his request is contrary to public policy  
28 or law, then the body of an inmate who has been legally executed  
29 shall be embalmed immediately and so directed by the  
30 commissioner, unless prior to execution, the inmate, relative, or  
31 bona fide friend indicates that the body is to be cremated or buried  
32 within 48 hours after death. If the body is not demanded or  
33 requested by a relative or bona fide friend within 72 hours after  
34 execution then it shall be delivered to a duly authorized and  
35 incorporated pathological and anatomical association in the State, if  
36 requested by an authorized association. If the body is requested by  
37 a relative or bona fide friend, the State shall pay a fee, not to exceed  
38 \$25 to the mortician for his services in embalming the body for  
39 which the mortician shall issue to the State a written receipt. If the  
40 body is requested by a duly authorized and incorporated  
41 pathological and anatomical association, the association shall pay a  
42 fee, not to exceed \$25 to the mortician for his services in  
43 embalming the body for which the mortician shall issue to the  
44 association a written receipt. When the receipt is delivered to the  
45 commissioner, the body of the deceased shall be delivered to the  
46 party named in the receipt or his authorized agent.

1       b. If the body is not delivered to a relative, bona fide friend, or a  
2       duly authorized and incorporated pathological and anatomical  
3       association, the commissioner shall cause the body to be decently  
4       buried, and the fee for embalming shall be paid by the State, and no  
5       religious or other services shall be held over the body after the  
6       execution, except within the facility selected for the execution by  
7       the department, and no one shall be present at the service except the  
8       officers of the prison, the person conducting the services and  
9       relatives by blood or marriage of the person executed.

10       c. The commissioner shall contact the Social Security  
11       Administration, Veterans' Administration, Public Welfare, and  
12       appropriate insurance companies for any possible death benefits to  
13       offset the State incurred burial expenses. The inmate's account may  
14       also be used for burial expenses.

15  
16       14. (New section) a. If there is reasonable ground to believe  
17       that a female inmate, sentenced to the punishment of death, is  
18       pregnant, the superintendent of the State institution having custody  
19       of the inmate shall impanel a jury of three licensed physicians to  
20       inquire into her pregnancy. A physician acting as a juror upon this  
21       inquisition need not be qualified to serve as a juror in a court of  
22       record.

23       b. The inquisition of the jury shall be signed by the jurors and  
24       the superintendent of the institution. If it is found by the jury that  
25       the inmate is pregnant, the superintendent shall suspend the  
26       execution of the warrant directing her execution until he receives a  
27       warrant from the commissioner directing that the convict be  
28       executed.

29       c. The superintendent shall immediately transmit the inquisition  
30       to the commissioner, who, as soon as he is satisfied that the inmate  
31       is no longer pregnant, shall issue his warrant, appointing a time and  
32       place for her execution, pursuant to her sentence.

33  
34       15. (New section) The department may adopt any rules or  
35       regulations necessary to implement the provisions of this  
36       amendatory and supplementary act.

37  
38       16. (New section) The Judiciary Committee of the General  
39       Assembly and the Judiciary Committee of the Senate, or their  
40       respective successors, are constituted a joint committee for the  
41       purposes of monitoring and evaluating the effectiveness of the  
42       implementation of this act. The Commissioner of the Department  
43       of Corrections shall, two years from the effective date of this act,  
44       report to the joint committee, an evaluation of the effectiveness of  
45       this act and the joint committee shall, upon receiving the report,  
46       issue as it may deem necessary and proper, recommendations for

1 administrative or legislative changes affecting the implementation  
2 of this act.

3  
4 17. This act shall take effect immediately and shall be applicable  
5 to any murder committed on or after the effective date.

6  
7  
8 STATEMENT

9  
10 P.L.2007, c.204, enacted on December 17, 2007, repealed the  
11 death penalty in this State and replaced it with life without parole.  
12 This bill would restore the death penalty for persons convicted of  
13 certain murders.

14 Under the bill, a person who committed the homicidal act by his  
15 own conduct, or, as an accomplice procured the commission of the  
16 offense by payment or promise of payment of anything of pecuniary  
17 value, could be sentenced to death if: (1) the victim was a law  
18 enforcement officer or correction officer and was murdered while  
19 performing his official duties or was murdered because of his status  
20 as a law enforcement officer or correction officer; (2) the victim  
21 was less than 18 years old; or (3) the murder occurred during the  
22 commission of the crime of terrorism.

23 Under the bill, as under prior law, a defendant found guilty of  
24 capital murder could only be sentenced to death after a second  
25 proceeding concerning sentencing. During the sentencing  
26 proceeding, the jury or the court would weigh the aggravating  
27 factors of the case against the mitigating factors in order to  
28 determine whether the defendant would receive a sentence of death.  
29 The aggravating factors would consist of the following:

30 (a) The defendant has been convicted, at any time, of another  
31 murder;

32 (b) In the commission of the murder, the defendant purposely or  
33 knowingly created a grave risk of death to another person in  
34 addition to the victim;

35 (c) The murder was outrageously or wantonly vile, horrible or  
36 inhuman in that it involved torture, depravity of mind, or an  
37 aggravated assault to the victim;

38 (d) The defendant committed the murder as consideration for the  
39 receipt, or in expectation of the receipt of anything of pecuniary  
40 value;

41 (e) The defendant procured the commission of the murder by  
42 payment or promise of payment of anything of pecuniary value;

43 (f) The murder was committed for the purpose of escaping  
44 detection, apprehension, trial, punishment or confinement for  
45 another offense committed by the defendant or another;

46 (g) The murder was committed while the defendant was engaged  
47 in the commission of, or an attempt to commit, or flight after

- 1 committing or attempting to commit murder, robbery, sexual  
2 assault, arson, burglary, kidnapping, carjacking or the crime of  
3 contempt in violation of the N.J.S.A.2C:29-9 b. (concerning  
4 domestic violence);
- 5 (h) The defendant murdered a public servant while the victim  
6 was engaged in the performance of his official duties, or because of  
7 the victim's status as a public servant;
- 8 (i) The defendant: (i) as a leader of a narcotics trafficking  
9 network and in furtherance of a conspiracy committed, commanded  
10 or by threat or promise solicited the commission of the murder or  
11 (ii) committed the murder at the direction of a leader of a narcotics  
12 trafficking network in furtherance of a conspiracy;
- 13 (j) The homicidal act that the defendant committed or procured  
14 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2  
15 (causing widespread injury or damage);
- 16 (k) The victim was less than 14 years old; or
- 17 (l) The murder was committed during the commission of, or an  
18 attempt to commit, or flight after committing or attempting to  
19 commit, terrorism.
- 20 As under prior law, the mitigating factors would consist of the  
21 following:
- 22 (a) The defendant was under the influence of extreme mental or  
23 emotional disturbance insufficient to constitute a defense to  
24 prosecution;
- 25 (b) The victim solicited, participated in or consented to the  
26 conduct which resulted in his death;
- 27 (c) The age of the defendant at the time of the murder;
- 28 (d) The defendant's capacity to appreciate the wrongfulness of  
29 his conduct or to conform his conduct to the requirements of the  
30 law was significantly impaired as the result of mental disease or  
31 defect or intoxication, but not to a degree sufficient to constitute a  
32 defense to prosecution;
- 33 (e) The defendant was under unusual and substantial duress  
34 insufficient to constitute a defense to prosecution;
- 35 (f) The defendant has no significant history of prior criminal  
36 activity;
- 37 (g) The defendant rendered substantial assistance to the State in  
38 the prosecution of another person for the crime of murder; or
- 39 (h) Any other factor which is relevant to the defendant's  
40 character or record or to the circumstances of the offense.